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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 JESSICA C. HARBACHECK,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL SECURITY,

11 Defendant.

Case No. C19-94 RAJ

**ORDER GRANTING  
COMMISSIONER'S MOTION TO  
DISMISS**

12 This matter is before the Court on the Commissioner's motion to dismiss Plaintiff's  
13 complaint as untimely. Dkt. 8. Plaintiff filed no response to the Commissioner's motion, which  
14 was noted for consideration on July 5, 2019. *See* Dkt. 8 at 1; Local Civil Rule 7(d)(3). Because  
15 Plaintiff did not file this action within the 60-day limitations period in 42 U.S.C. § 405(g) and  
16 Plaintiff has not demonstrated extraordinary circumstances warranting equitable tolling, the  
17 Court grants the Commissioner's motion and dismisses this case with prejudice.

18 Plaintiff's application for Supplemental Security Income was denied initially, upon  
19 reconsideration, and in an ALJ decision dated March 28, 2018. Dkt. 8, Ex. 2 at 8, 5.<sup>1</sup> In a notice  
20 dated November 14, 2018, the Appeals Council denied Plaintiff's request for review, making the  
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22 <sup>1</sup> A district court may consider documents attached to a motion to dismiss if the documents'  
23 authenticity is not contested and the plaintiff's complaint necessarily relies on them. *Lee v. City  
of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Here, Plaintiff's complaint seeks review of,  
and thus necessarily relies on, the ALJ's decision and Appeals Council's notice of denial.

1 ALJ's decision the final decision of the Commissioner. *Id.* at 25. The notice of denial informed  
2 Plaintiff of her right under 42 U.S.C. § 405(g) to seek judicial review within 60 days of receipt,  
3 which was presumed to be five days after the notice's date. *Id.* at 26. Plaintiff's deadline to file  
4 an action was thus January 18, 2019. *See* Dkt. 8 at 2. However, Plaintiff did not file this action  
5 until January 22, 2019. Dkt. 1.

6 The 60-day limit is a statute of limitations, which must be strictly construed but is subject  
7 to equitable tolling. *Bowen v. City of New York*, 476 U.S. 467, 479, 481 (1986); *Vernon v.*  
8 *Heckler*, 811 F.2d 1274, 1277 (9th Cir. 1987). Plaintiff filed her civil action after the 60-day  
9 limit had expired. Plaintiff has not filed any opposition to the motion to dismiss and thus has  
10 provided no argument that the statute of limitations should be equitably tolled, and Plaintiff's  
11 complaint lacks any factual allegations demonstrating circumstances under which the statute of  
12 limitations should be equitably tolled. *See* Dkt. 3. Therefore, the 60-day time restriction set  
13 forth in 42 U.S.C. § 405(g) bars review of the Commissioner's decision denying the claim for  
14 Social Security benefits, and no special circumstances have been shown that would permit this  
15 Court to toll the limitation period.

16 Accordingly, the Commissioner's motion is GRANTED and this case is DISMISSED  
17 with prejudice.

18 DATED this 17th day of July, 2019.

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21 The Honorable Richard A. Jones  
22 United States District Judge  
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